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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.4.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.23 of 2006

Smt.Alima Bi ... Petitioner

Vs.

1.The District Collector and
District Magistrate,
Kancheepuram District
Kancheepuram.

2.The Secretary to Government
Prohibition and Excise Department
Fort St.George,
Chennai-600 009

3.The Superintendent
Central Prison,
Vellore. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the first respondent culminating with the Order of detention bearing Ref.No.B.D.F.G.I.S.V.No.41/2005 dated 17.8.2005 and G.O.(Va) No.2705 dated 28.10.2005 confirming the Order of detention dated 17.8.2005 and to produce the detenu Sathik @ Sathik Basha, S/o. Ahamed Basha, detained in the Central Prison, Vellore , before this Court and set him at liberty.

For Petitioner : Mr.T.Sathiyamoorthy

For Respondents: Mr.Abudhukumar Rajarathinam
Govt. Advocate (Crl. Side)

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is the mother of the detenu by name Sathik @ Sathik Basha, who was detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 17.8.2005, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to the fact, submitted that though the detenu was arrested and remanded for the offence under Section 302 IPC in Crime No. 346 of 2005 on the file of B2 Vishnukanchi Police Station in respect of occurrence that had taken place on 16.7.2005, the detaining authority, while passing the order of detention has not considered the same and merely stated that the ground occurrence in Crime No.361 of 2005, which is for an offence under Section 307 IPC, arrived at a conclusion that there is imminent possibility of his coming out on bail by filing bail application. In other words, according to the learned counsel, when the detenu was already arrested and remanded in graver offence, namely, offence under Section 302 IPC, in respect of 8th adverse case, in the absence of such awareness relating to the same, the passing of the detention order based on the ground case which is for an offence under Section 307 IPC., the ultimate conclusion of the detaining authority is vitiated.

4. We verified the awareness shown by the detaining authority in respect of the imminent possibility, which is available in Paragraph 5 (i) of the grounds of detention. As rightly pointed out by the learned counsel for the petitioner, it is seen from the grounds of detention in respect of occurrence that took place on 16.7.2005, the detenu was arrested for an offence in Crime No. 346 of 2005 and on the date of passing of the detention order he is in prison and he has not come out on bail. While considering the imminent possibility of his coming out on bail, the detaining authority has merely taken note of the ground case, namely, Crime No.361 of 2005, which is for lessor offence, namely, 307 IPC.

5. In such circumstances, in the absence of awareness relating to the Crime No.346 of 2005, which is for a graver offence of Section 302 IPC, we are of the view that the detaining authority has failed to take note of relevant aspect while passing the order of detention. On this ground, we

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are of the view that the detention order is liable to be quashed and accordingly, we quash the same.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

ga

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Government,
   State of Tamil Nadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-600 009.

2. The District Collector and
   District Magistrate,
   Kancheepuram District, Kancheepuram.

3. The Superintendent, Central Prison, Vellore
   (In duplicate for communication to detenu)

4. The Joint Secretary to Government,
   Public (Law and Order), Department
   Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr T.Sathiyamoorthy, Advocate SR 16997

JE(CO)
CGS/19.4

HCP. No.23 of 2006

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